

**THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MFB Fertility, Inc.,

Plaintiff,

v.

Action Care Mobile Veterinary Clinic, LLC,

Defendant.

Case No. 1:23-cv-03854

Dist. Judge Harry D. Leinenweber

Mag. Judge Gabriel A. Fuentes

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION FOR LEAVE TO AMEND  
THE COMPLAINT**

Defendant Action Care Mobile Veterinary Clinic, LLC (“Action Care” or “Defendant”) by its counsel, respectfully submits this response (“Response”) to Plaintiff MFB Fertility, Inc.’s (“Plaintiff” or “MFB”) motion for leave to amend the complaint (“Motion to Amend”) [Dkt. 22]. As part of the Motion to Amend, MFB submitted a proposed amended complaint (“PAC”) [Dkt. 22-1].

Action Care believes that MFB’s PAC would be futile, but in the interests of the most efficient adjudication of this case, Action Care is willing to forgo opposing the Motion to Amend. Notwithstanding Action Care’s lack of opposition to the filing of the PAC, Action Care believes that the copyright infringement claim in the PAC is subject to dismissal with prejudice at the pre-discovery stage under Federal Rule of Civil Procedure 12(b)(6). Action Care intends to file a motion to dismiss the PAC and a motion for attorneys’ fees in relation to the PAC. Further, Action Care believes that Action Care is also entitled to attorneys’ fees for, at a minimum, the work performed on the copyright infringement claim contained in MFB’s original complaint. If the filing of the PAC renders moot Action Care’s currently pending motion to dismiss and motion for attorneys’ fees (“Action Care’s Pending Motion”) [Dkt. 10], then Action Care intends to address

the appropriateness of attorneys' fees for Action Care's prior efforts in relation to the copyright infringement claim contained in MFB's original complaint.

In an effort to be as efficient as possible and to avoid duplicating efforts, Action Care expects to reuse much of the prior work performed for Action Care's Pending Motion. Additional argumentation will need to be added, however, so Action Care requests that the Court grant leave to Action Care to file a memorandum of up to 30 pages in support of Action Care's contemplated combined motion to dismiss and motion for attorneys' fees ("Contemplated Combined Motion"). Action Care is open to MFB having a corresponding increase in the page limit for MFB's potential response to Action Care's Contemplated Combined Motion.

Action Care further notes that Action Care filed an Answer, Affirmative Defenses, and Counterclaims on September 22, 2023. While Action Care would expect to file a separate answer and affirmative defenses to the PAC, Action Care's counterclaims ("Counterclaims") remain in effect, and Action Care does not expect to revise the Counterclaims after the filing of the PAC. MFB has not yet responded to the Counterclaims.

In general, Action Care reserves all rights to assert any potential claims and defenses, and Action Care does not waive any of those rights in forgoing opposition to the Motion to Amend.

Dated: November 28, 2023

Respectfully submitted,

**ZLATKIN CANN ENTERTAINMENT**

By: /s/ Ilya G. Zlatkin

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